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# STUDIES

IN THE

## EARLY HISTORY OF INSTITUTIONS.

BY

DENMAN W. ROSS, PH. D.

IV.

### THE THEORY OF PRIMITIVE DEMOCRACY IN THE ALPS.

A PAPER READ BEFORE THE AMERICAN ASSOCIATION FOR THE ADVANCEMENT  
OF SCIENCE, AUGUST 27, 1880.

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## THE THEORY OF PRIMITIVE DEMOCRACY IN THE ALPS.

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As long ago as 1871, Sir Henry Maine said, in his book entitled "Village Communities in the East and West," that he knew nothing more striking among Mr. Freeman's many contributions to our historical knowledge than his identification of the fragments of Teutonic society, organized upon its primitive model, which are to be found in the Forest Cantons of Switzerland. Sir Henry Maine refers to the Swiss *Landesgemeinden*, or commonwealths, and to Mr. Freeman's theory about them; that they are an archaic political institution that has survived to our day.

You all remember, I am sure, the stirring description that Mr. Freeman gives of this institution in his Essay upon the English Constitution. "Year by year," he says, "on certain spots among the dales and mountain-sides of Switzerland, the traveller who is daring enough to wander out of beaten tracks, and to make his journey at unusual seasons, may look on a sight such as no other corner of the earth can any longer set before him. He may there gaze and feel, what none can feel but those who have seen with their own eyes, what none can feel in its fulness more than once in a life-time, the thrill of looking for the first time, face to face, on freedom in its purest and most ancient form. He is there in a land where the oldest institutions of our race, institutions which may be traced up to the earliest times of which history or legend gives us any glimmering, still live on in their primeval freshness. He is in a land where an immemorial freedom, a freedom only less eternal than the rocks that guard it, puts to shame the boasted antiquity of kingly dynasties, which,

by its side, seem but as innovations of yesterday. There, year by year, on some bright morning of the spring-tide, the Sovereign People, not intrusting its rights to a few of its own number, but discharging them itself in the majesty of its corporate person, meets in the open market-place, or in the green meadow at the mountain's foot, to frame the laws to which it yields obedience as its own work, to choose the rulers whom it can afford to greet with reverence as drawing their commission from itself." After saying so much in general with regard to "freedom in its purest and most ancient form," which he has discovered in the Alps, Mr. Freeman goes on to describe what he calls "the immemorial democracy of Uri"; and this description serves to illustrate what I have just read to you.

Without doubt we have in the Swiss commonwealths, in Uri and Appenzell, for example, the purest form of democracy, — democracy without representation. Every freeman has an equal voice in the assembly, and he is there in person to help in the making of laws and the appointment of magistrates; but the assertion that this democracy is immemorial and archaic is the statement of a theory, which, though it has been generally received, has never been established by any sufficient or satisfactory evidence.

It is the object of the following argument to show, — 1. That the theory of primitive democracy in the Alps has not been established by satisfactory evidence; that it cannot therefore be regarded as a contribution to historical knowledge; and, 2. That according to the accounts and records there was nothing of democracy in the political constitution of early Teutonic society. You will see that there were two classes of freemen, — the chieftains and their followers: that the office of chieftain was hereditary and also elective; not elective, however, by majorities of the electors, not elective upon democratic principles, but by individual choice, prompted by individual preference. The adherence of the followers to their respective chieftains was in all cases personal; and it was also voluntary unless the followers were dependents. You will see that the evolution of the political and economic institutions of the early Germans was directly towards feudalism, a social system based upon personal adherence and personal dependence.

I have just said that Mr. Freeman has given us no satisfactory evidence to show that the democracy of the Swiss Cantons is either immemorial or archaic, to show that it is an archaic political institution that has survived to our day. He tells us, in the first volume of his "Norman Conquest" (Cap. III. § 2, note), that he intends to treat the history of the democratic Cantons of Switzerland more at large in the second volume of his "Federal Government," and he says: "I will now only say that, though the amount of independence enjoyed by the ancient Cantons has been greatly exaggerated, there is evidence to show that, in some districts at least, the old Teutonic system can be traced back uninterruptedly as far as we have any records at all, so that we may fairly presume an unbroken succession from the Germans of Tacitus." The same argument is reiterated less concisely in the appendix of notes to the "Essay on the English Constitution." This is all the argument we have as yet received from Mr. Freeman. He intends to enlarge upon it in the second volume of the "Federal Government"; but the volume has not appeared, and we have no more promise of it. In the mean time we have a brief which we will proceed to examine.

Mr. Freeman tells us that we can trace the old system back a long way into the Middle Ages, that we may therefore presume an unbroken succession from the Germans of Tacitus. You will observe, in the first place, that Mr. Freeman assumes that it is the old system which we trace back in this way. He assumes that the present existing system is substantially the same as that which existed in the time of Tacitus, which is certainly something to be proved, and not to be assumed. Mr. Freeman should have said the present system may be traced back a long way into the Middle Ages. He should then have shown by a careful analysis and comparison that it is identical with that which existed in the time of Tacitus. Then he might have pointed out the probable connection between the two systems. But even then the argument would have been a very weak one; for, as you will observe, in the second place, Mr. Freeman admits that there is a gap in the records across which we are helped by inference and not by evidence. We trace, he says, the old system back into the Middle Ages, and presume that it goes back to the Germans of Tacitus. Of course the force or weakness of the argument depends upon the extent

of this gap between the mediæval records and the account of Tacitus. The greater the gap, the weaker the argument.

It happens that the first record containing any reference to the Canton Uri is of the year 732. Eto, the Abbot of Reichenau, was banished by the Duke of the Alamanni to Uri, — *in Uroniam*. (Monumenta Germaniæ. Scriptores, V. p. 98.) A document of 853 contains the words *pagellum Uroniæ*, and a reference to *homines tam liberos quam et servos*. The little canton, with its lands and people, churches and houses, is given by Ludwig the German to the cloister of nuns at Zurich. It appears as private estate, serving private ends, — *jure proprietatis et ad nostrum opus*. (See Neugart. Codex Diplomaticus, CCCXLIX., and also Rilliet's "Origines," p. 401.) The first record, however, which contains anything from which we can infer any organized and independent movement among the people of Uri is of a later date. It is of the year 955. It is a record in the archives of Zurich, given, however, in full in the appendix to Rilliet's "Origines de la Confédération Suisse." The inhabitants of Uri (*inhabitantibus Uroniam*), the dependents and tenants of the Fraumünster at Zurich, resist a proposed increase in their rents and dues, on the ground that it was for them, the people of Uri, to decide what additional rents and dues might be levied. It was a matter to be decided according to custom and law (*patrum nostrorum jure et lege*), not by the authority of the Abbess or her advocate. The custom or law referred to is probably that which we find in the Lex Alamannorum (Tit. XIII.). The freemen upon the estates of the Church, *quos colonos vocant*, paid to the Church the same rents and dues that the freemen upon the estates of the king paid to him.

You see that there is really no evidence in the document of 955 to establish the existence of communal or democratic institutions in Uri. All that we can infer from it is, that there was in Uri a group of men who had, by law, a certain right, which in the year 955 they were able to maintain against usurpation. (Compare Rilliet, p. 37.) It was not until the thirteenth century that Uri obtained what could be called political independence, and it was not until afterwards that the people had the right to choose their own magistrate, or *Landammann*. (Compare Bluntschli, Geschichte des Schweizerischen Bundesrechts, I. p. 28.) But

I will grant, for the sake of argument, that the democracy of the Swiss Cantons may be traced back to the year 955, not in its present developed form, but somehow or other as Mr. Freeman would have it. (See appendix of notes to the Essay on the English Constitution.)

If the earliest record in the history of communal or democratic institutions in the Alps dates in the year 955; and regarding the other Cantons beside Uri there are no records of so early a date from which we can infer any independent organization among the lower classes; if, as I say, the earliest record in the history of communal or democratic institutions in the Alps dates in the year 955, the middle of the tenth century, and the account of the Germans of Tacitus was written at the beginning of the second century, and there is no evidence to establish the existence of democratic institutions during the intermediate time, there is a gap of eight and a half centuries in the history of those institutions; and you will agree with me, I am sure, when I say that their continuity from the time of Tacitus to the present day cannot be established.

Mr. Freeman is inclined to admit, in his "Norman Conquest" (Cap. III. § 2, note), that in all but "a few of the smallest Swiss Cantons, and in several of these, the ancient freedom had to be reconquered, and was not uninterruptedly retained." He says that this was "altogether so" in Glarus and Appenzell and "in Uri to some extent." He does not tell us where it was not so. Still he insists that the democracy in the Alps, if not a survival, is at least a revival of the democracy which existed among the Germans in the time of Tacitus. And this seems to be Mr. Freeman's theory, divested of rhetorical exaggeration and reduced to simplest statement.

Granting that the political constitution of early Teutonic society was democratic, Mr. Freeman's argument is very weak, owing to the lapse of at least eight and a half centuries, probably more than twelve centuries, during which we have no records to show, either that the democracy of early times was surviving, or that the traditions of it were being preserved. If, however, the political constitution of early Teutonic society was not democratic, not at all like the constitution of the democratic Cantons of Switzerland, Mr. Freeman's theory will deserve no support, nor any further consideration.

I shall now proceed to lay before you, in as good order as I can and as briefly, the facts which we have which relate to the political organization of early Teutonic society. We must find out whether it was in any respect democratic, or not; we must find out, if we can, precisely what it was.

The first account we have of the Germans, at least the first account from which we learn anything with regard to the organization of society among them, is found in two or three chapters of Cæsar's Commentary "de Bello Gallico." The facts contained in these chapters are few and bare enough, but we have them from an original witness, and one of the highest character. Cæsar describes as the prime constituents of Teutonic society two classes of persons, — the chieftains, or *principes*, and the people; *gentibus cognationibusque hominum qui una coierunt*. In any nation of Germans there were numbers of chieftains, and the mass of the people were grouped under their leadership. We learn that in time of peace there was no common ruler over the chieftains, but they governed their followers more or less independently. Cæsar says of them (B. G., VI. 23): *inter suos jus dicunt controversiasque minuunt*. All this agrees with what Baed says of the Saxons (Hist. Eccl., V. 10). They had no king, but a great many rulers instead; *satrabas plurimos suae genti prae-positos*. And what was true of the Germans in general in the time of Cæsar, and of the Saxons according to Baed, was true also of the Lombards after the death of King Kleph, at the end of the sixth century. As Paul the Deacon tells us in his History (II. 31): For ten years the Lombards had no king, but were governed by their dukes alone, and each of these ruled over his own city. In all there were thirty-six of them. The evidence, therefore, goes to show that in early times there were many chieftains in each nation of the Germans, and, when they had no common ruler, no king or chief of chieftains, they ruled over their followers more or less independently.

We know, however, that there were general or national assemblies in which the chieftains with their respective followers met together; and Cæsar tells us that in assemblies of this kind one of the chieftains would rise and propose an expedition, and invite others to join him in it, and those who approved of the man, and of the expedition he proposed, rose and promised to follow and

obey. This invitation to join in expeditions was not extended to the mass of the common people; for, as Cæsar tells us (B. G., IV. 1), they were divided each year into two bands, and while one was led to war, the other was obliged to remain at home to superintend the cultivation of land, to provide the means of subsistence for themselves and those who were absent. *Sic neque agricultura nec ratio atque usus belli intermittitur.* There were many chieftains in each nation of the Germans, and they were constantly engaged in military expeditions, now under one leader, now under another. The chieftains governed their respective followers more or less independently, and when they were starting upon their expeditions they divided them into two bands, one of which they took with them, while they left the other at home. This is what we gather from the testimony of Cæsar.

Now we want to find out, if we can, whether the office of chieftain was elective or hereditary; and, as Cæsar has nothing to say about that, we will call up Tacitus. He tells us in his "Germania" (Cap. 18), that the right to be a chieftain was inherent in those persons who were of noble birth or distinguished parentage; *insignis nobilitas aut magna patrum merita principis dignationem etiam adolescentulis adsignant.* From which it appears that the right to be a chieftain was hereditary. But Tacitus goes on to say, that those who did not have the right to be chieftains, *ceteri*, the rest of the freemen chose among the chieftains the best; *robustioribus ac jam pridem probatis.* The freemen chose among the chieftains those whom they severally and individually preferred, and became their personal followers, their *comites*. This is what Tacitus tells us: from which it appears that the office of chieftain was elective. The chieftainship of the early Germans was hereditary and also elective; not elective, however, in the modern fashion, by majorities of the electors, but by their individual choice prompted by their individual preference. The chieftains were elected by divisions among the electors. Drop a number of magnets of different size and power among a lot of iron tacks, and you will see an election of the magnets by the tacks upon the old Teutonic principle. There were many chieftains in each nation, and among them the freemen were at liberty to choose those whom they individually preferred to follow and obey. The result of this was that the freemen were constantly



separating into groups, and each group had its chieftain; and the size of the group varied according to the attractive force of its leader. If he was particularly noble by birth, rich in land or stock, or distinguished for courage or success, he was sure to have many followers. If he was not particularly noble, nor rich, nor distinguished, he had very few. Tacitus tells us that the chieftains vied with one another as to which should have the most numerous and the bravest followers; *cui plurimi et acerrimi comites*.

This interpretation of the testimony of Tacitus is quite different from that which has been generally adopted. The prevailing opinion is, that, according to the account of Tacitus, there were chieftains who were elected upon democratic principles, who acted as representatives of the people; and each of them had about him a band of personal followers, as a sort of body guard. As Canon Stubbs says (Doc. Ill. of Engl. Hist., Introd., p. 3): The villages and cantons were governed by the *principes* appointed by the nation in its popular assembly. . . . and the *principes* had the privilege of being attended by a train of *comites*, who fought for them in battle, waited upon them in peace, and regarded the honor of association with them as more than a compensation for such diminution of freedom as the relation of patron and dependent involved. The text of the *Germania* does not, however, admit of any such interpretation. If you will read the passage under discussion (the thirteenth chapter of the *Germania*), you will see that the word *ceteri* is used to describe those who did not attain to the dignity of chieftainship (*principis dignationem*), and the *ceteri* were the *comites*. And as to the words *principis dignationem*, they convey the meaning dignity of chieftainship, and no other. The translation which has been adopted by some writers, giving a transitive force to the word *dignatio*, as if it meant the right of having, instead of the right of being, a chieftain, is warranted by no usage known to classical or any other Latin with which we are acquainted.

The conclusion we reach then is, that there were two classes of freemen, — those who had the right to be chieftains and those who were the personal followers and companions of the chieftains. The right to be a chieftain was hereditary; but those who had not this right were at liberty to choose among the

chieftains those whom they personally preferred. Although the office of chieftain was hereditary, it did not *per se* involve the adherence of followers. The chieftainship was hereditary, but followers were not inherited with it. The adherence of the followers was in all cases personal. It was also voluntary.

This last statement must not be made, however, without a qualification. The adherence of the followers was in all cases personal, and it was voluntary unless the followers were dependents. We must divide the followers into two classes, — free followers and dependents.

We might infer, from what Tacitus tells us in his fourteenth chapter, that the followers were regularly dependent upon their chieftains for food and arms; but I cannot regard the statements in that chapter as strictly correct; for, in Chapter 13, Tacitus tells us that some of the followers got their arms from their fathers or kinsmen; as if by inheritance; and, in Chapter 20, he speaks of a law of inheritance, according to which all property was equally divided among sons or nearest kinsmen. Therefore some of the followers, probably many of them, had wealth of their own, and were not necessarily dependent upon their chieftains. There were two classes of followers, — those who were dependent upon their chieftains for food and arms, and those who had their own means of subsistence and self-defence; and it made a great difference in that early society whether a man belonged to one class or the other.

Tacitus tells us (Germ., Cap. 44) in a passage seldom quoted, but a passage that seems to me very significant, that among the Suiones, the Germans of the North, wealth was greatly esteemed, and that it followed from that that the chieftains could govern with no doubtful claim to obedience: *est apud illos et opibus honos, eoque unus imperitat, nullis iam exceptionibus, non precario iure parendi.*

The Visigothic Law (V. III. 1) reads as follows: If any one give his follower arms or anything else, and he, the follower, desires to desert his patron to choose another, he must first restore to him everything received by way of benefice. We see from this that if the Tacitean *comes* got his arms from his chieftain, he was not free to desert him until he gave them back. According to the ancient custom of the Lombards, as we learn from a capitulation

lary of the year 793, a freeman could commend himself to whomsoever he pleased; *De liberis hominibus Langobardis ut licentiam habeant se commendandi ubi voluerint*. So in the Edict of Rothar, the Lombard king (Sec. CLXXVII.), "A freeman can go where he pleases with his *fara* [*familia pecuniaque*], with the king's permission; but if he has received anything from his chieftain, or any one else, he must restore that to him or to his heirs." The phrase of Domesday Book (I. p. 175), *si ita liber homo est ut habeat socam suam et sacam suam et cum terra sua possit ire quo voluerit*, is significant in this connection.

These and other similar records testify, that among the followers there was a class of dependent persons, who got their arms and the means of subsistence from their respective chieftains; that they were bound in consequence of this indebtedness, not only to remain with their patrons, but to perform for them such services as were consistent with their rank or dignity. Compare the Capitulary of the year 815, Cap. VI. If a man was full-free, he was not to do, or, rather, should not be required to do, any servile work. Compare the Capitulary of the year 793: *De liberis hominibus ad servilia non cogendis*; and I may refer you also to the Sirmondi Formula, No. 44, to the words, *ingenuile ordine tibi servitium vel obsequium impendere debeam*.

You see that the freemen were divided into two classes,—the chieftains and their personal followers; and you see that the personal followers of the chieftains were divided into two classes,—those whose adherence was voluntary, who could desert their chieftains *ad libitum*, and those who were bound in dependence, who were not at liberty to desert their chieftains. These were the prime factors in the organization of early Teutonic society.

The clans and nations of men were confederations of more or less feudalized states, each under its chieftain; and a general or national assembly was a meeting of the chieftains, accompanied by their personal followers, voluntary and dependent.

Looking at the account of a general or national assembly among the early Germans, the account that Tacitus gives us in the eleventh chapter of his "Germania," and explaining it by the aid of modern political facts and modern political theories, we are inclined to say that the chieftains were the representative magistrates of the people. We are inclined to describe the assembly

as democratic in character. But the modern point of view is not the only point of view, it is not the right point of view.

Do we not read in the Law of Athelstan, the Anglo-Saxon king, (Ord. 2,) that every man had a lord in the *folk moot*? Canon Stubbs, Mr. Freeman, and most of the German writers, would say that this came to pass in course of time. But do we not learn from Tacitus what we learn from this law of Athelstan? He tells us that those who were not chieftains took their choice among those who were, and became their personal followers. It appears, therefore, that the *folk moot*, or popular assembly, in the time of Tacitus, was — what it was in the time of Athelstan — an assembly of chieftains accompanied by their personal adherents.

The philologists tell us that the German word *König*, our *king*, corresponds with the Sanskrit *ganaka*; and this signifies the father of a family. (See Max Müller, Science of Language, II. 284.) This is a text for us, pointing to the fact that the kingship or chieftainship of early times is rooted in the idea of paternity and paternal authority. The authority of the king or chieftain is primarily the authority of the father or the patriarch: and we may say that, among the branches of the Aryan race at least, the tap-root in the history of institutions is the *patria potestas*. It was an absolute authority, not over wife and child simply, but over followers in dependence, and slaves in servitude. The father of the family was its sovereign ruler; and the clans and the nations of men were associations of families bound together by the blood relationship of their heads. This blood relationship was the sole bond of their confederation; and we have what Mr. Grote has very happily described as the omnipotence of private force, tempered and guided by family sympathies. In the course of time, however, certain families became eminent above others by reason of their success in the struggle for existence. The movements of these families at first determined, and afterwards governed, those of all the other families with which they were in any way associated; and the members of such prominent families became the leaders and the rulers of their fellow-men, as their chieftains or their kings; and the authority of these chieftains or kings was the authority of heads of families, which was the only sort of authority known to that early society, passing beyond the limits of families over bands of personal and voluntary

adherents. It was an absolute authority, tempered only by the independence and liberty of those over whom it was exerted. It was a sovereign authority struggling under adverse conditions.

It was a sovereignty, limited by competition. There were numbers of chieftains in every nation, and the people were free to transfer their allegiance from one to another; the result of which was, that the competition among the chieftains to get and retain the greatest number of devoted adherents caused their authority over these adherents to sink to a minimum. The real character of that authority is revealed only in the course of time, when this competition ceased, in consequence of the spread of dependence, of settled life and local attachment; or as the result of agreement among the chieftains in opposition to the independence and liberty of those whom they governed.

In the year 587, the Frankish kings Guntram and Childebert agreed that they would not attempt to allure one another's followers from their allegiance. They would neither persuade them to desert, nor receive them if they did so: *similiter convenit ut nullus alterius leudes nec sollicitet nec venientes excipiat*. As if our capitalists should agree not to solicit one another's workmen, nor to employ them should they come seeking labor. \*As if our great land-owners should agree not to receive one another's tenants, should they present themselves and ask for leases of land. If such events should come to pass, the power of the capitalist and the landlord would be revealed to our amazement. So it was with the kings and chieftains of early times. So long as the competition among them to obtain the greatest number of devoted adherents was unchecked, their authority was kept at a minimum. But when this competition ceased, great powers, which had been latent before, became apparent to the world in the feudal monarchy of the Middle Ages.

The aim of the student who pretends to work in a scientific way is first to attain a point of view embracing all ascertainable facts in their natural and true relationship, and then to lead others to that point of view. So now, if you have followed me through my argument, and if I have led you to comprehend the facts we have which relate to the political organization of early Teutonic society, we are prepared to reconsider together Mr. Freeman's picture of free institutions in the Swiss Cantons, and

we are prepared to declare at once that it will not serve to describe the political organization of Teutonic society as revealed in the earliest accounts and records.

In early times the office of king or chieftain was hereditary. The office of magistrate in the Swiss commonwealth is elective. The elections take place periodically, and are accomplished by the concurrence and agreement of a majority of the electors. The early kings and chieftains were also elected; not, however, by majorities of the electors, but by divisions among them. Every freeman, who was not a dependent, chose among the kings or chieftains the one whom he personally preferred, and remained with him, under his leadership and government, as long as he pleased, and no longer. The government of the early kings and chieftains was paternal or monarchical, in early times rather paternal than monarchical, in later times the reverse of this. In either case the authority emanated from the persons who exercised it, and not from the persons over whom it was exercised. In the Swiss commonwealth, on the contrary, the chief magistrate is the representative of the people. It is their sovereignty, and not his own, that he administers. And as to the law; in early times it was the voice of the fathers, of the chieftains, of the kings, while in the modern democracy it is the voice of the people as a legislative body.

In no respect do we discover any resemblance between the constitution of the democratic Cantons of Switzerland and the political organization of early Teutonic society: and it follows that the constitution of the Swiss commonwealth is not an archaic political institution that has survived to our day; but an institution which has come into being within comparatively recent times. Its origin is not pre-historic, not archaic, but mediæval. Particularly what it was will be a subject for future investigation.

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